

The Honorable Christopher M. Alston
Chapter 11
Hearing Date: September 16, 2016
Hearing Time: 11:00 am
Hearing Place: Seattle
Response Date: September 9, 2016

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re

No. 16-11767-CMA

NORTHWEST TERRITORIAL MINT, LLC
Debtor.

DECLARATION OF J. TODD TRACY IN
SUPPORT OF APPLICATION TO
APPROVE EMPLOYMENT OF THE
TRACY LAW GROUP PLLC AS
DEBTOR'S COUNSEL NUNC PRO TUNC
FOR THE PERIOD OF APRIL 1, 2016
THROUGH APRIL 15, 2016 AND TO
APPROVE FINAL COMPENSATION
AND REIMBURSEMENT OF EXPENSES
FOR THE PERIOD OF APRIL 1, 2016
THROUGH APRIL 11, 2016

I, J. Todd Tracy declare as follows:

1. I am an attorney admitted to practice before this Court and am the sole member of The Tracy Law Group PLLC (“TTLG”). I am one of the attorneys that represented Northwest Territorial Mint, LLC (hereinafter “Debtor”). I have personal knowledge of the facts stated in this Declaration and am competent to testify to them.

2. I have undertaken an investigation of any connections that may exist between TILG and Debtor, the creditors of Debtor, other known parties in interest in this

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1 case, and their respective attorneys and accountants. To the best of my knowledge, there are
2
3 no other connections.
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5 3. A copy of the Engagement Letter is attached as Exhibit A to this
6 Declaration.
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8 4. Debtor and TTLG agreed to an initial security retainer of \$150,000. TTLG
9 subsequently agreed to accept \$149,460 as a pre-petition retainer. TTLG agrees that the
10 funds are not a true retainer as defined by the Washington Rules of Professional Conduct
11 but are an advanced fee deposit. TTLG received the advanced fee security funds ("Funds")
12 and deposited the Funds into the TTLG's IOLTA Trust Account as follows: (i) a \$50,000.00
13 wire from an individual named Diane Erdmann on March 31, 2016; and (ii) A cashier's
14 check from an individual named John Drummeey to Diane Erdman that Diane Erdman then
15 endorsed over to TTLG on March 31, 2016, in the amount of \$99,460.00. Since the case was
16 filed, issues arose regarding ownership of the Funds. On August 4, 2016, the Court entered
17 its memorandum decision finding that the Trustee had not met his burden of establishing
18 that the Funds were the property of NWTM and that the Funds, after payment of any
19 allowed fees to TTLG, should be returned to Ms. Erdmann. The Trustee has appealed that
20 ruling.
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23 5. Prior to the filing of the Chapter 11 Petition, TTLG sent the Debtor an
24 invoice for pre-petition fees and costs related to preparing the case to file. This e-mail was
25 sent to Mr. Hansen at 10:28 p.m. on March 31, 2016. Mr. Hansen did not raise any
26 objections to the invoiced amount and subsequently authorized the filing of the petition.
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Prior to electronically filing the petition, TTLG drew down \$21,885.50 for pre-petition fees incurred related to advising the Debtor as to its options under the Washington States Receivership Act, the federal receivership statute and the United States Bankruptcy Code. TTLG also prepared the initial petition, entered approximately 3400 priority unsecured creditors and 160 general unsecured creditors into the bankruptcy software filing software used by the firm. In total, TTLG spent 63.5 hours in pre-petition time prior to the filing. The United States Courts debited \$1,717.00 for the Chapter 11 filing fee, via ACH from the funds in the trust account.. Accordingly, as of the time of filing and continuing forward, the trust account has a balance of \$125,857.50. Pursuant to the Order permitting TTLG to withdraw, TTLG continues to hold those funds in its IOLTA Trust Account.

6. TTLG has not shared or agreed to share compensation with any other entity.

7. To the best of my knowledge, TTLG does not hold or represent any interest adverse to Debtor or his bankruptcy estate in the matters for which TTLG is to be engaged. I believe TTLG is a “disinterested person” for purposes of §§ 101(13), 327(c) and 1107(b) of the United States Bankruptcy Code.

8. I have reviewed and am familiar with Local Bankruptcy Rule 2016.

9. TTLG was contacted by Northwest Territorial Mint, LLC about a potential receivership or bankruptcy on March 25, 2016. Northwest Territorial Mint, LLC was insistent upon filing either a receivership case or a bankruptcy by April 1, 2016 because of actions scheduled in the King County Superior Court on that date. The Debtor executed an

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1 engagement letter on March 31, 2016, retaining TTLG for purposes of representing it in the
2 present Chapter 11 bankruptcy (“Engagement Letter”).
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5 10. Debtor filed a Chapter 11 petition on April 1, 2016. The Debtor was a
6 debtor-in-possession under 11 U.S.C. §§ 1107(a) and 1108(b).
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9 11. The Debtor was informed that J. Todd Tracy (“Tracy”) and Steven J. Reilly
10 (“Reilly”), the attorneys at TTLG that would be primarily involved in this case, were
11 admitted to practice before this Court and have read LBR 2016.
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14 12. Debtor agreed to compensate TTLG on the basis of its ordinary hourly rates,
15 with additional reasonable fees to be paid on the basis of criteria set forth in the Washington
16 Rules of Professional Conduct, including time spent, skill needed to perform legal services
17 properly, preclusion of other employment, fees customarily charged, the amount involved
18 and the results obtained, and the experience, reputation and ability of counsel.
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21 13. To the best of the Debtor’s knowledge, the attorneys at TTLG did not have
22 any connection with the Debtor, its creditors, any other party in interest, their respective
23 attorneys or accountants, the U.S. Trustee, or any person employed in the office of the U.S.
24 Trustee. TTLG has not represented, and will not represent, any client other than the Debtor
25 with respect to this case.
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28 14. On April 5, 2016, the Debtor filed an emergency motion approving the
29 employment of Bill Weisfield and Stuart Heath of Elliot Bay Asset Solutions, LLC as chief
30 restructuring officers of the Debtor (*Docket No. 12*). That motion was withdrawn on April 6,
31 2016 when Elliot Bay indicated it was no longer willing to proceed in the case (*Docket No.*
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1 29). At a hearing on April 7, 2016, TTLG advised the Court that the Debtor would not
2 oppose entry of an order appointing a Chapter 11 Trustee. On April 7, 2016, the Court
3 entered an order directing the U.S. Trustee to appoint a Chapter 11 Trustee (*Docket No. 45*).
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10 On April 11, 2016, the Court entered an order appointing Mark Calvert at the Chapter 11
 Trustee in the case (*Docket No. 51*).

12 15. On April 5, 2016, the Debtor also filed an emergency motion to pay priority
13 wages and salaries (*Docket No. 9*), an emergency motion for continuation of utility service and
14 payment of adequate assurance payments to utilities (*Docket No. 10*) and an emergency
15 motion for a case management order (*Docket No. 11*). These motions were set for hearing on
16 April 7, 2016
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23 16. On April 7, 2016, the Court entered an order denying the emergency motion
24 approving the employment of Bill Weisfield and Stuart Heath of Elliot Bay Asset Solutions,
25 LLC as chief restructuring officers of the Debtor (*Docket No. 39*). The same day, the Court
26 entered an order approving the adequate assurance payments to the utilities (*Docket No. 41*)
27 and an order authorizing the payment of pre-petition employee wages and compensation
28 (*Docket No. 42*).
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37 17. On April 7, 2016, the Court entered an order directing the U.S. Trustee to
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39 appoint a Chapter 11 Trustee (*Docket No. 45*). On April 11, 2016, the Court entered an order
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41 appointing Mark Calvert as the Chapter 11 Trustee in the case (*Docket No. 51*).
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43 18. On April 15, 2016, the principal of the Debtor, Mr. Ross Hansen, contacted
44 Tracy and requested the return of the funds held in the TTLG IOLTA Trust Account.
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1 Tracy advised Hansen that due to the competing interests asserted in the funds, he was not
2 in a position to return the funds and instead would continue holding the funds in the
3 IOLTA Trust Account. The parties orally terminated the engagement at that point.
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5 19. On April 15, 2016, TTLG formally sent a written termination of
6 representation letter to NWTM. A copy of the termination letter is attached as Exhibit B.
7 In the letter, TTLG reiterated that it would continue to hold the funds pursuant to
8 Washington Rule of Professional Conduct 1.15A(g) and would file a motion to authorize
9 TTLG to withdraw as counsel for NWTM.

10 20. On April 18, 2016, TTLG filed a motion to withdraw as attorneys for
11 NWTM (*Docket No. 76*). TTLG also filed a motion to shorten time for a hearing on the
12 motion to withdraw (*Docket No. 78*). The Court set a hearing on TTLG's motion to
13 withdraw on May 6, 2016.

14 21. On May 9, 2016, the Court entered an order authorizing TTLG to withdraw as
15 counsel for NWTM and further ordering TTLG to hold the funds in the firm's IOLTA trust
16 account. (*Docket No. 212*). The Court also set an evidentiary hearing to determine
17 ownership of the Funds for June 22, 2016. The evidentiary hearing concluded on July 6,
18 2016.

19 22. On August 4, 2016, the Court entered this Court's Memorandum Opinion
20 and Further Order on Motion for Authority to Withdraw as Attorney for Debtor, holding
21 that the Funds must be returned to Ms. Erdmann after payment of any allowed
22 expenses.

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compensation awarded to TTLG. (*Docket No. 580*) The Court directed TTLG to submit a fee application by August 25, 2016.

23. On April 18, 2016, TTLG filed its motion to withdraw indicating that the mere filing of the case was considered an appearance on behalf of the Debtor that required an order permitting TTLG to withdraw. During oral argument, all of the parties conceded that TTLG had been representing the Debtor until the written termination letter was issued. The parties conceded that TTLG was entitled to look to the advanced fee deposit for fees that would be awarded and Ms. Erdmann conceded that TTLG would have a lien against the funds for the actual fees and expenses incurred and approved by the Court.

24. TTLG must also establish that it provided benefit to the estate for a *nunc pro tunc* order authorizing employment. TTLG provided numerous benefits to the case.

25. At the time the case was filed, a judgment creditor was making very aggressive collection efforts to realize on its judgment. If successful, it would have obtained all of the assets to the detriment of the 3400 other creditors in the case. The Debtor was looking for meaningful protections so that it could reorganize or wind-down its affairs to the benefit of the creditors, including those with potentially priority claims, including either a state court receivership or a bankruptcy. Ultimately the receivership was ruled out because it was not clear as to the extraterritorial effect of the automatic stay issued out of a Washington superior court.

26. TTLG was also very clear from the initial consultations that the principal of the debtor could not be involved in management of the corporation due to his prior felony

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1 convictions and other legal issues. Because of those issues, it was obvious that existing
2 management would not have the confidence or support of the creditors, the United States
3 Trustee or the Court. As a result, TTLG was very forthcoming with the Debtor from the
4 beginning that an alternate management scenario would need to immediately be put in place
5 if the case were to have any potential for success.
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12 27. Initially, it was determined that the Debtor would engage Elliot Bay Asset
13 Solutions (“EBAS”) to operate the company as a Chief Restructuring Officer, having been
14 given all of the operational controls. TTLG went so far as to contact the United States
15 Trustee and advise them of the case status, the known operational issues and the need for
16 alternate management structures, including the request for a chief restructuring officer.
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23 28. TTLG negotiated with EBAS over the terms of the engagement and on April
24 5, 2016 filed a motion to authorize its retention as the chief restructuring officer. (*Docket No.*
25 *12*). Multiple parties, including the United States Trustee objected to the motion (*Docket*
26 *Nos. 18, 24 and 25*). Because of the various objections and for other reasons, EBAS
27 withdrew its name from consideration on April 6, 2016. TTLG then began advising the
28 Debtor on the likelihood of the appointment of a Chapter 11 Trustee. After exhaustive
29 discussions, the Debtor ultimately agreed not to oppose entry of an order requiring the
30 appointment of a Chapter 11 Trustee.
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41 29. Additionally, TTLG filed other “first day” motions including motions to
42 authorize the payment of a prepetition payroll (*Docket No. 9*), to enter a case management
43 order (*Docket No. 11*) and to approve utility deposits to ensure continued utility services
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(Docket No. 10). The Court approved the payroll motion (Docket No. 42) and the motion for continued utility service (Docket No. 41). The Court continued the motion for a case management order until after the Chapter 11 Trustee was appointed.

30. The overall strategy in filing the case provided substantial benefit to the estate in that the property of the estate was brought under Court supervision for the benefit of all creditors instead of just one aggressive creditor. The case also benefitted from TTLG's insistence that the case could not move forward with existing management. Those discussions with the Debtor's management were difficult but ultimately resulted in an unopposed appointment of a Chapter 11 Trustee.

31. Even after the Chapter 11 Trustee was appointed, TTLG continued to receive several hundred calls and e-mails from creditors concerning the status of the case. Because no order for withdrawal of TTLG had been entered, and because TTLG was still an officer of the Court, TTLG returned hundreds of calls and responded to e-mails from creditors after the Trustee was appointed.

32. Attached hereto as Exhibit C is a copy of invoice #14438 that sets forth:
(a) the date of each service that was rendered; (b) a detailed description of each service rendered; (c) a list of the costs incurred; and (d) the total number of hours spent and total amount of compensation requested. Also attached hereto as Exhibit D is a time listing sheet that breaks down the amount of time spent by each lawyer, per category identified above.

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1 33. All of the services billed in connection with this matter were billed at rates
2
3 equal to TTLG's normal hourly rates as follows:
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<u>Name</u>	<u>Hourly Rate</u>
J. Todd Tracy	\$450
Jamie J. McFarlane	\$340
Steven J. Reilly	\$295

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12 34. The normal hourly rates charged by TTLG are consistent with or less than
13 other attorneys of equal experience in Seattle. No agreement or understanding exists
14 between TTLG and any other person for the sharing of compensation received or to be
15 received for services rendered in, or in connection with this case.
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21 35. The invoice and time listing attached hereto sets forth the date each expense
22 was incurred, the description of each expense, and the amount of each expense for which
23 reimbursement is sought. Costs set forth in this statement are the same as those routinely
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billed to clients of TTLG.

30 36. TTLG utilizes an offsite answering service as part of its telephone service.
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TTLG plays a flat monthly fee for the service. If the actual call time exceeds the plan
amount, TTLG is billed for the overage. TTLG received several hundred phone calls
regarding this case in April and May 2016. TTLG provided a script for the answering
service directing the callers to the Court's website for answers about the case. TTLG
believed that this was a more efficient and cost-effective method of dealing with the creditor
calls than expending attorney time and fees responding. TTLG has billed the excess

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1 telephone charges attributable to this case. These amounts were \$1,525.82 for April 2016
2 and \$396.97 for May 2016.
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5 Under penalty of perjury, I declare I have read this statement and to the best of my
6 knowledge believe it is true.
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10 DATED this 25th day of August, 2016.
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13 _____ /s/ *J. Todd Tracy*
14 J. Todd Tracy
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